BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

THE NATURE OF A BANK'S INTEREST IN PAPER DEPOSITED FOR DISCOUNT OR COLLECTION. — There has been a growing tendency to hold that a bank is not a holder in due course of negotiable paper deposited for discount or collection. Some of the older cases held that the bank became a holder in due course, because the depositor had no right to recall a check so deposited. These are condemned in a recent article on the ground that there is lack of consideration, since the bank gives nothing but a mere crediting with the right to draw immediately, and that until the bank pays out something on the paper, or gives up securities for it. or in some other way furnishes substantial value, it cannot be considered the owner. *When Is a Bank the Bona Fide Owner of a Check Left for Deposit or Collection*, by Albert S. Bolles, 56 U. P. L. Rev. 375 (June, 1908). The more recent decisions *prima facie* support the author's contentions in the case of notes, but he finds a different rule prevailing as to checks. Mr. Bolles repudiates this distinction, and maintains that in either case if the depositor has a fund with the bank larger than the amount of the instrument no title should pass, but if less the bank should own, either absolutely or to the extent of its lien.

The test suggested seems unsatisfactory. The question can be better settled by an analysis of the true relationship which arises when indorsed negotiable paper is deposited for discount or collection. The cases hold that where such paper is deposited for collection the interest of the depositary bank is inferior to the depositor's, and that the bank to which the paper is sent for collection gets no better right than the depositary bank.[1] These principles are often expressed by saying that neither of the banks gets "title" to the paper. Yet the courts hold that a *bona fide* purchaser from either owns outright, and free from previous equities.[2] The cases can be reconciled on the theory either of agency and subagency, or of trusts. The latter seems preferable. On indorsement to the depositary bank for collection the legal title passes, since indorsement is the mode of transferring title to negotiable paper, whether to a bank or an individual.[3] But the bank is to hold the legal title, not for its own benefit, but for the depositor's. When the depositary bank indorses to the collecting bank, the latter thereby gets the legal title, which it must hold in trust for the depositary bank, and the latter in turn holds the equitable claim so created in trust for the depositor.[4] When the former collects the money it will, according to the recognized custom of bankers, simply owe the depositary the amount. The depositary then holds this legal claim in trust for the depositor. When the banks settle *inter se*, the trust disappears, and the depositary bank becomes a simple debtor of the depositor.[5] The same principles apply to the case

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[1] Meridian First Nat'l Bank *v.* Strauss, 66 Miss. 479; Commercial Bank *v.* Marine Bank, 1 Abb. App. Dec. (N. Y.) 405.

[2] See Cody *v.* City Nat'l Bank, 55 Mich. 379.

[3] Giles *v.* Perkins, 9 East 12. See Ames, Cas. Trusts, 2 ed., 11, 12; 20 HARV. L. REV. 232.

[4] *Cf.* 13 HARV. L. REV. 143. See Ames, Cas. Trusts, 2 ed., 17, 18.

[5] Commercial Bank *v.* Armstrong, 148 U. S. 50; Richmond First Nat'l Bank *v.* Davis, 114 N. C. 343. See 15 HARV. L. REV. 79; 9 *ibid.* 428.

of a deposit of a note or check for discount. The bank gets the legal title by the indorsement.[6] From first to last the results are founded on the proposition that by indorsement of the paper the legal title passes. This has nothing to do with the amount of other funds of the depositor held by the depositary. Whether the latter is a *bona fide* purchaser is therefore not a question of legal title, but of consideration. And an examination of the cases discussed in the principal article will show that the latter is the real bone of contention.[7]

The giving of credit to the depositor in such a case is really a promise by the bank to pay out money to him at his call. It is supported by good consideration, namely, the receipt of the title to the paper, and seems to be part of a valid contract. It is difficult to see why one who has thus become bound to do a thing has not given value as much as one who has actually done something.[8] The courts, however, do not generally take this view, and the majority are therefore inclined to hold that the depositary bank is not a *bona fide* purchaser unless it gives some consideration other than a mere credit to the amount of the proceeds of the paper.[9]

THE PREFERENCE GIVEN TO THE LEGAL ESTATE OVER THE EQUITABLE. — Probably no rule of law which has to deal with cases where one of two innocent parties must inevitably suffer can hope to give entire satisfaction. In a recent article Mr. Edward Jenks criticizes the rule that a conveyance of the legal title to a purchaser for value without notice cuts off prior equities. *The Legal Estate*, 24 L Quar. Rev. 147 (April, 1908). The doctrine criticized is established by authority,[1] and the article amounts to a suggestion that the law should be changed.

The author regards this rule as an instance of undue preference for the legal estate over the equitable. He mentions other instances, such as the refusal of courts to allow the equitable owner the right to possession, and the differences in form between conveyances of legal estates and conveyances of equitable. The author also maintains that the doctrine of tacking is another unfortunate result of such preference, and goes on to show that historical reasons, such as the requirement of public services and other burdens from the one seised, and the notoriety of transfers by seisin, which justified this preference originally, no longer exist.

If a trustee in breach of trust conveys the *res* to a purchaser for value without notice, the purchaser is protected; but if the trustee merely contracts to convey the *res* to such purchaser, the *cestui* is protected. Mr. Jenks thinks the accident of the purchaser's having acquired the legal title turns the decision without affecting the merits and therefore that the prefer-

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[6] Burton *v.* United States, 196 U. S. 283; Cragie *v.* Hadley, 99 N. Y. 131.

[7] See Dykman *v.* Northbridge, 80 Hun (N. Y.) 258; City Deposit Bank *v.* Green, 130 Ia. 384; Lancaster Nat'l Bank *v.* Huver, 114 Pa. 216.

[8] Parker *v.* Crittenden, 37 Conn. 148. This principle has been applied to promises of marriage. Smith *v.* Allen, 5 Allen (Mass.) 454; and to a few other transactions. Ex Parte Golding, 13 Ch. D. 628; West *v.* Williams, [1898] 1 Ch. 488. *Contra*, Eversdon *v.* Mayhew, 65 Cal. 163; Dean *v.* Anderson, 34 N. J. Eq. 496.

[9] Central Nat'l Bank *v.* Valentine, 18 Hun (N. Y.) 417; Albany County Bank *v.* People's Ice Co., 92 N. Y. App. Div. 47, 55; Manufacturer's Nat'l Bank *v.* Newell, 71 Wis. 309; Citizens' State Bank *v.* Cowles, 180 N. Y. 346.

[1] Lea *v.* Copper Co., 21 How. (U. S.) 493.